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FEB 22 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1166

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

PAUL SILVER and DONALD W. PARKER,
Petitioners,

vs.

JOHN C. BENSON, JR., *et al.*,
Respondents.

OBJECTION OF RESPONDENT TAXPAYERS TO MOTIONS FOR LEAVE TO FILE BRIEFS *AMICI CURIAE*

Robert W. Valimont
William E. Benner
Anita F. Alberts
POWER, BOWEN & VALIMONT
102 North Main Street
Doylestown, Pennsylvania 18901
(215) 345-7500
Attorneys for Respondent Taxpayers

Cover printed by:
Batavia Times Publishing Co
Edward W. Shannon
Philadelphia, Pa. (215) 232-6181

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This objection is filed pursuant to United States Supreme Court Rule 36. This case is here on Petition of Paul Silver and Donald Parker for Writ of Certiorari to the Commonwealth Court of Pennsylvania.

Respondent taxpayers have withheld consent from the various applicant amici organizations for four reasons.

First, these organizations have no interest in the question presented by this case, i.e. whether elected officials may be required to remit misspent public funds to municipal treasuries pursuant to state law permitting surcharge for unauthorized expenditures. Applicant organizations may have an interest in the question they contend should be considered by this Court, but that issue was never presented to or considered by the courts below.

The trial court considered only the following issue, by agreement of the parties, as taken verbatim from the

trial transcript, page 53a, lines 7-17:

> THE COURT:
> Finally, I believe it was agreed that the exact language of the issue framed is as follows and the legal issue that the court will address itself to is the question whether the supervisors of a second class township have the authority to spend township funds to engage persons not already employed by the township for the express purpose of lobbying for the passage of state legislation.

The Commonwealth Court of Pennsylvania considered the same issue and affirmed, wholly on the basis of state law. There is no federal question presented by this case.

Second, applicant amici organizations are attempting to supplant Respondent taxpayers as representatives of the municipal interest in this case by asserting that they speak for various

municipalities. There is no municipal party in this case; to the extent municipal interests are represented here, Respondent taxpayers alone have proper standing to represent them in challenging public expenditures. Applicant amici organizations representing mayors, large and small cities, and counties across the nation have no valid interest in this case. They are not governed by the Second Class Township Code of Pennsylvania under which this case was decided. They make no complaint against any comparable surcharge statutes of their own states. The applicant amici organizations from Pennsylvania -- who should be challenging the surcharge provision of Pennsylvania's Second Class Township Code if they want protective legislation from the

Pennsylvania Legislature, do not do so. Instead, they attempt to obscure the issue of fiscal accountability for unbudgeted and unauthorized expenditures by burying them under a makeshift constitutional "question" nobody has raised in this case, until now.

Third, the fact that both proposed amici briefs frame their "issues" exclusively in the future tense is tacit acknowledgment that no chilling, silencing, or content regulation of protected speech has occurred in this case. Applicants decry the surcharge but do not challenge the constitutionality or propriety of the statute under which it was imposed. Some applicant amici complain that surcharge should not be imposed upon elected officials who are paid only

$25 per meeting. This complaint is properly directed to the Pennsylvania Legislature, which holds the purse strings, not to this Court. If applicant amici wish protection against future surcharge for misspending public funds, the unchallenged state surcharge statute should be the proper subject of their concern, not the claimed "question" asserting municipal corporations' First Amendment rights.

Applicants, like Petitioners, seek to cloak the real issue in this case, i.e. fiscal accountability of freespending public officials, in eloquent but invisible constitutional garb.

Fourth, applicant amici, like Petitioners, attempt to pull a federal issue

up from this case by its bootstraps -- by abandoning the issues decided below, then framing for this Court a new issue never even addressed to the state courts below, then claiming this Court needs their assistance as amici in an effort to claim federal jurisdiction on the ground Pennsylvania courts ignored the constitutional issue of vague dimensions which they raise here.

There are no novel issues in this case, except in the briefs of applicant amici and Petitioners. There has never been a claim of abridgement of municipal speech, except as phrased in language of a future chilling effect. State and federal law is consistent and has long followed the established principle that First Amendment freedoms need not be

subsidized with public funds unless the state Legislature has specifically decided it wishes to do so. Applicant amici, like Petitioners, seek an advisory opinion on a hypothetical federal constitutional issue not present in this case.

Federal jurisdiction as defined in Article III of the United States Constitution cannot be achieved in this case. Applicants should be denied permission to file briefs as amici curiae and this Court should not review this case.

Respectfully submitted,

ROBERT W. VALIMONT
WILLIAM E. BENNER
ANITA F. ALBERTS
POWER, BOWEN & VALIMONT
102 North Main Street
Doylestown, Penna. 18901
(215)345-7500
Attorneys for Respondent Taxpayers

Dated: February 22, 1984